

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
CONSTRUCTION INDUSTRY HEALTH  
AND SECURITY FUND; LOCALS 302  
AND 612 OF THE INTERNATIONAL  
UNION OF OPERATING ENGINEERS-  
EMPLOYERS CONSTRUCTION  
INDUSTRY RETIREMENT FUND;  
ALASKA OPERATING ENGINEERS-  
EMPLOYERS TRAINING TRUST FUND,

Plaintiffs,

v.

THE CITY OF UNALASKA, a  
municipality of the State of Alaska,

Defendant.

NO.

COMPLAINT TO COMPEL AUDIT

Plaintiffs Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund, and Alaska Operating Engineers-Employers Training Trust Fund and allege:

I.

They are unincorporated associations operating as trust funds pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, to provide medical, retirement, and training benefits for eligible participants. Plaintiffs' offices are located in King County, Washington.

II.

The Court has jurisdiction over the subject matter of this action under Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-Hartley Act, 29 U.S.C. §185 (a).

III.

Venue is proper in this district under Section 502 (e)(2) of ERISA, 29 U.S.C. §1132 (e)(2), because plaintiff Trusts are administered in this district.

IV.

Defendant is a municipality of the State of Alaska.

V.

Defendant is bound to a collective bargaining agreement with Local 302 of the International Union of Operating Engineers (hereinafter "Local"), under which Defendant is required to promptly and fully report for and pay monthly contributions to the Plaintiff Trusts at varying, specified rates for each hour of compensation Defendant pays to its employees who are members of the bargaining unit

1 represented by the Local (such bargaining unit members are any of Defendant's part  
2 time or full time employees who perform any work task covered by the Defendant's  
3 labor contract with the Local, whether or not those employees actually join the  
4 Local).

5 VI.

6 Defendant accepted the Plaintiffs' respective Trust Agreements and thereby  
7 agreed to audits by the Plaintiff Trusts of its records as follows, in part:

8  
9 The Board may require the Employers, any Signatory Association, any  
10 Individual Employer, the Union, any Employee or other beneficiary to promptly  
11 furnish to the Trustees, on demand, such payroll records, information, data,  
12 reports, or documents reasonably required for the purposes of administration  
13 of the Fund. The parties agree that they will use their best efforts to secure  
14 compliance with any reasonable request of the Board for any such  
15 information, data, reports or documents. The Trustees, or their authorized  
16 representatives, may examine the pertinent payroll records of each Individual  
17 Employer with respect to the Employees benefiting from this Agreement  
18 whenever the Trustees in connection with the proper administration of the  
19 Fund deem such examination necessary or advisable.

20 In the event that any such audit shall determine that the Individual Employer is  
21 delinquent in the payment of contributions due the Fund, the Individual  
22 Employer shall be obligated for the cost of such audit; provided, however, that  
23 the Board of Trustees may waive the imposition of such costs upon good  
24 cause shown.

25 VII.

26 The Trustees of Plaintiff Trusts deem it both necessary and advisable to the  
proper administration of the Trusts that their authorized representatives examine the  
Defendant's books and records for the inclusive period of January 1, 2015 through  
the Present Date to determine if the Defendant previously reported for and paid to the

Trusts all of the amounts due them for the inclusive employment of members of the bargaining unit represented by the Local for said period.

VIII.

On or about November 15, 2019, Plaintiff Trusts' auditors sent a document request to the Defendant requesting the following documents:

1. Transmittals (monthly contribution reports) to the Trust for the period of October 2018 – December 2018, and July 2017 – September 2017.
2. Job classification documentation for the following employees (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, department/job code etc.):

Name and Social Security

Earnshaw, Z.  
Kresh, K.  
Leakenoff, K.  
Doyle, T.  
Hahn, B.  
Shockley, J.  
Tolai, T.  
Chamberlin, C.  
Sabater, T.  
Tuavale, T.  
Ah Siu, T.  
Batten, L.  
M. Bautista  
Blakeley, B.  
Bliss, P.  
Brown, S.  
Burnham, A.  
Chamberlain, C.  
Clement-Valley, A.  
Cohenour, T.

1 To date Defendant has failed to make all of the requested records available for  
2 the thorough examination the Trustees deem necessary and advisable to the proper  
3 administration of the Trusts.

4 WHEREFORE, Plaintiffs pray the court as follows:

5 1. That the Court enter an Order Compelling Audit under which the  
6 Defendant shall be directed by the Court, within a specified time to make available to  
7 the authorized representatives of the Trustees of the Trusts the following documents:

- 8
- 9 A. Transmittals (monthly contribution reports) to the Trust for the  
10 period of October 2018 – December 2018, and July 2017 –  
11 September 2017.
- 12 B. Job classification documentation for the following employees (i.e.  
13 workers compensation reports, screen shot of job title or job  
14 description from human resource database, organization chart,  
15 phone lists including title, signed job applications, business  
16 cards, department/job code etc.):

17 Name and Social Security

18 Earnshaw, Z.  
19 Kresh, K.  
20 Leakenoff, K.  
21 Doyle, T.  
22 Hahn, B.  
23 Shockley, J.  
24 Tolai, T.  
25 Chamberlin, C.  
26 Sabater, T.  
Tuavale, T.  
Ah Siu, T.  
Batten, L.  
M. Bautista  
Blakeley, B.  
Bliss, P.  
Brown, S.  
Burnham, A.

Chamberlain, C.  
Clement-Valley, A.  
Cohenour, T.

2. Afford to the authorized representatives of the Trustees of the Trusts both ample time and opportunity to examine all such materials of Defendant at such time and at such place as shall be convenient to the Trustees' authorized representatives.

3. For judgment against the Defendant for:

- A. All of the Plaintiff's attorney's fees incurred in gaining auditor access to Defendant's records;
- B. All auditing expenses incurred by the Trusts in conducting the audit;
- C. All of the Plaintiffs' costs incurred in gaining auditor access to defendant's records; and
- D. For such other and further relief as the Court may deem just and equitable.

DATED this 6th day of December, 2019.

REID, McCARTHY, BALLEW & LEAHY,  
L.L.P.

  
\_\_\_\_\_  
Russell J. Reid, WSBA #2560  
Attorney for Plaintiffs